



This document is scheduled to be published in the Federal Register on 05/08/2012 and available online at <http://federalregister.gov/a/2012-11093>, and on FDsys.gov

[Billing Code: 4710 -30]

DEPARTMENT OF STATE

[Public Notice 7871]

Certification Related to the Khmer Rouge Tribunal; correction

AGENCY: Department of State.

ACTION: Notice; Correction

SUMMARY: The Department of State published a document in the Federal Register of on August 16, 2011 concerning a Certification Related to the Khmer Rouge Tribunal.

Inadvertently, the Memorandum of Justification was not included in the document for publication in the Federal Register and this notice corrects this error.

FOR FURTHER INFORMATION CONTACT: Ariel Wyckoff, (202) 647 9446.

CORRECTION:

In the Federal Register of August 16, 2011, in FR Volume 76, page 50808, the following Memorandum of Justification should have been printed as an attachment to the original notice, PN 7556:

MEMORANDUM OF JUSTIFICATION

UNDER SECTION 7071 (c) OF THE DEPARTMENT OF STATE,

FOREIGN

OPERATIONS AND RELATED PROGRAMS APPROPRIATIONS ACT,

2010, AS CARRIED FORWARD BY THE FULL-YEAR CONTINUING

APPROPRIATIONS ACT, 2011

Section 7071 (c) of the Department of State, Foreign Operations and Related Program Appropriations Act, 2010 (Div. F P.L. 111-117), as carried forward by Full-Year Continuing Appropriations Act, 2011 (Div. B, P.L. 112-10), provides that funds appropriated in the act for a United States contribution to a Khmer Rouge tribunal may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the Extraordinary Chambers in the Courts of Cambodia (ECCC), also commonly known as the “Khmer Rouge Tribunal” (KRT). Deputy Secretary Nides has signed the certification pursuant to State Department Delegation of Authority 245-1.

Factors Justifying Determination and Certification

Allegations of corruption were abundant in the ECCC’s early years until the Director of Administration was replaced in late 2008. His replacement, who remains the Director today has been extraordinarily competent and has cooperated well with the donor community, other court officials, and the United Nations Office of Legal Affairs.

The allegations and change in administration did not compromise the fundamental integrity of the ECCC. In July 2010 the ECCC successfully concluded Case 001 – the trial against the former chief of the Tuol Sleng torture center, Kaing Guek Eav (“Duch”). His trial and conviction were the first meaningful attempt to hold a Khmer Rouge official accountable for war crimes committed under the Khmer Rouge regime. The United States, foreign governments, and NGOs monitoring the ECCC agree that the proceedings met international standards of justice.

The ECCC, in cooperation with the UN, has taken additional steps to protect the integrity of its proceedings against allegations of corruption. In August 2009 the United Nations Office of Legal Affairs and the Government of Cambodia reached agreement to establish an Independent Counselor to serve as a deterrent against corruption and address potential future incidents of corruption or other forms of misconduct at the court. Shortly after his appointment, the Counselor released a “Meet the Independent Counselor” document to all court staff explaining his role, how he can be reached, and when he should be contacted. The circular outlined his roles and responsibilities, which include provision of an annual report to the UN

Office of Legal Affairs and the Cambodian Government. The guidelines established for the Independent Counselor confirm his obligations to protect the confidentiality of complainants, to ensure that there are no reprisals for whistle-blowing and to provide a report of his activities to both the UN and RGC. The United States, in coordination with other donor nations, has conducted diplomatic efforts with both the United Nations Office of Legal Affairs and Government of Cambodia to assist in making the Independent Counselor fully operational, which have been effective. Addressing the ECCC in October 2010, the Secretary General commended the work of the Independent Counselor and the effect it has had on the perception of the court – that the ECCC’s administration will not tolerate any form of corruption.

Because of all these steps taken to combat corruption and make the processes of the Court transparent, independent and efficient, it is the view of the State Department, other donor countries, prominent court officials, and non-governmental organizations (NGOs), that the ECCC appears to have resolved the corruption and mismanagement issues raised in 2008.

The United States currently plays a leadership role with respect to oversight of the ECCC by serving as a member of the New York-based ECCC Steering Committee. The United States also plays a leading role in the donors group in Phnom Penh, Cambodia. An additional contribution of funds will indicate an ongoing commitment to the work of the ECCC, and improve our position in discussions at the Steering Committee and with other current and potential donors. The Steering Committee oversees the budget and the timelines established by the ECCC and is currently satisfied that the ECCC is administratively and financially sound.

The ECCC provides a monthly report to the UN Controller and the UN Department of Economic and Social Affairs, which closely monitors the activities of the court including its expenditures. In addition, all hiring on the international side of the court is vetted by the UN Department of Economic and Social Affairs. The UN Office of Legal Affairs actively engages on judicial management issues. For example, the ECCC accepted the UN's recommendation that the Pre-Trial Chamber sit on a full-time basis in order to improve the ECCC's efficiency and to expedite its decision-making. In addition, last year's U.S. contribution provided partial funding for a high-level official to work specifically on ECCC management –related

issues. This official has effectively personally intervened with high level Cambodian officials to address ECCC management issues.

In late April the ECCC's Office of the Co-Investigating Judges (OCIJ) ended its investigation for Case 003 and forwarded the evidence to the Office of the Co-Prosecutors. The international co-prosecutor, Andrew Cayley, dissatisfied with the amount and depth of evidence, requested the OCIJ to conduct further investigations.

The issue of whether Case 003 falls within the jurisdiction of the ECCC is one on which reasonable persons can disagree. There is a formal process under the governing documents of the ECCC for resolving this disagreement. We see no basis for any assertions of mismanagement and possible misconduct in the OCIJ's handling of Case 003.

The Department looks forward to the final closing order and appeal so that this issue regarding further investigation into Case 003 can be resolved in with finality.

Certification and United States Policy Objectives

Certification recognizes the efforts of the United Nations and the Government of Cambodia to address allegations of corruption and mismanagement within the ECCC. It is not an indication, however, that no further work needs to be done. Both parties must continue to exercise oversight of the ECCC's operations, and the donor community and NGOs must continue their vigilant engagement with the United Nations and the Cambodian government to ensure that the ECCC remains corruption-free and well-managed.

May 1, 2012

Date

Mr. Ariel Wyckoff,
Program Analyst,
Bureau of East Asian and
Pacific Affairs
U.S. Department of State

[FR Doc. 2012-11093 Filed 05/07/2012 at 8:45 am; Publication Date: 05/08/2012]